IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 319 of 2001

TO

CIVIL REVISION APPLICATION No. 323 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANIBEN MOHANBHAI VANKER

Versus

SHRI NARAYAN POTTERY WORKS

Appearance:

MS KRISHNA U MISHRA for Petitioner.

MR DHIRAJ M PATEL for Respondent No. 1/1-1/3

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 16/10/2002

CAV JUDGEMENT

The present Civil Revision Applications are filed against the order dated 5th January 2001 passed by the learned Judge, Small Causes Court, Ahmedabad in P.S.R.P. No. 7 to 20 and 23 of 1997. There were in all 15

matters before the trial court, out of which in 4 matters, being PSRP No. 9/97, 10/97, 12/97 and 13/97, the respondents had not resisted the application by filing the reply and out of remaining 11 matters, the present Civil Revision Applications are in respect of 5 original-respondents/present petitioners. Since common issues are involved in all the 5 petitions, they are being disposed of by this common judgment. Since the common issues were framed and common evidence was recorded in PSRP No. 7/97, which gives rise to the Civil Revision Application No. 319 of 2001, the facts were taken from the said petition.

2. The facts, giving rise to the present petition, are as under :

The respondent, who is the original-applicant, in all the applications before the learned Judge, Small Causes Court, is a partnership firm having 3 partners. The said firm was dealing in the business of ceramic articles at Saijpur Bhoga, Naroda Road, Ahmedabad. The respondent was having several rooms to accommodate its workers to reside in the said rooms. The said workers were doing labouring works of ceramic articles and accordingly they were provided and permitted to reside in the rooms in the property of the respondent. It is further contended in the application before the trial court that the workers were not having any accommodation to reside in the city and hence one room was provided to each of the worker on leave and licence basis and they were to abide by the terms and conditions as incorporated in the leave and licence agreement. Though the workers were provided accommodation on different dates, leave and licence agreement was executed on 1.5.1975. It was also made clear in the said leave and licence agreement that the workers were provided shelter and they were permitted to reside there during the tenure of their service with the present respondent and that the municipal taxes and education cess were to be borne by the present respondent. It is further contended in the application before the trial court by the present respondent that as per condition No.6 of leave and licence agreement, the present petitioners were only entitled to reside and use the premises till they continue to be in service with the respondent. In case of completion of service of the petitioners or in case of their retirement from service or if they leave the service in that case the petitioners were to hand over the possession of the premises in question to the respondent. It was further contended that the petitioners have left service of the respondent and that they were not doing any labouring work or

service with the respondent and that therefore they were not entitled to keep or occupy possession of the premises in question for any further period and hence the respondent was entitled to get possession of rooms from the petitioners. It was further contended that since the petitioners were not vacating the suit premises, the respondent was compelled to serve notice dated 9.4.1997 on the petitioners terminating the leave and licence agreement with the petitioners. Despite this notice the premises were not vacated by the petitioners and hence the abovereferred petitions were filed by the respondent before the Small Causes Court at Ahmedabad on 19.7.1997.

3. After service of the notice, the present petitioners appeared and filed their written statement in reply resisting the claim made by the present respondent before the Small Causes Court. It was inter alia contended in the said reply by the present petitioners that the petition filed by the respondent before the Small Causes Court is not maintainable and that the condition No.6 of leave and licence agreement was not binding on the petitioners and that they have not retired or left or resigned from the services of the respondent. The respodnent had locked out the premises without assigning sufficient or lawful reasons. It was also alleged in the said reply that the respondent had dragged the petitioners to unnecessary litigations and only with a view to harass them and to obtain easy eviction of the respective premises from the petitioners, the petitions were filed by the present respondent in Small Cause Court.

4. After considering the rival submissions, the ld. Judge of the Small Causes Court has come to the conclusion that the present respondent had proved their case in their favour and against the petitioners and it has been held that the petitioners were licensees and the premises were given to the petitioners on the basis of the licence fees as they were the servants of the respondents. Accordingly the possession warrant was ordered to be issued by the ld. Judge, Small Causes Court. It is this order which is under challenge in the present Civil Revision Applications before this Court.

5. Mr. KU Mishra, ld. advocate appearing for the applicant-revisionists, in all these Civil Revision Applications, have vehemently submitted that the order passed by the ld. Judge, Small Causes Court is ex-facie illegal, unjust and without any jurisdiction and is also barred by the period of limitation. As far as the petitioners are concerned, it was submitted that their

services were not terminated nor they have resigned from their service and simply because there was closure of the unit, they did not cease to be the servants of the respondent. It was further submitted that they were the tenants of the respondent and hence the provisions contained in the Bombay Rent Act are applicable and the court below has no jurisdiction to pass the order regarding issuance of possession warrant against the petitioners. It was further submitted that the application filed by the respondent before the Small Causes Court was also barred by the period of limitation as the period prescribed under Art. 137 of the Limitation Act expired much earlier and any application filed after that period is apparently barred by the law of limitation.

6. In support of his contention that the petitioners are not licensees but they are tenants, Mr. Mishra has relied on the decision of House of Lords in Street v. Mountford, 1985 (2) All England Law Reports Page 289, wherein it is held as under :

> "The test whether an occupancy of residential accommodation was a tenancy or a licence was whether, on the true construction of the agreement, the occupier had been granted exclusive possession of the accommodation for a fixed or periodic term at a stated rent, and unless special circumstances existed which negatived the presumption of a tenancy (eg where from the outset there was no intention to create legal relations or where the possession was granted pursuant to a contract of employment) a tenancy arose whenever there was a grant of exclusive possession for a fixed or periodic term at a stated rent. The intention of the parties, as manifested in the agreement, that they only intented to create a licence (and expressed the agreement to be a licence) and that they agreed not to be bound by the Rent Acts was irrelevant. Accordingly, since the effect of the agreement between the appellant and the landlord was to grant the appellant exclusive possession for a fixed term at a stated rent, and no circumstances existed to negative the presumption of a tenancy, it was clear that the appellant was a tenant."

7. Mr. Mishra has further relied on the decision of House of Lords in the case of AG Securities v. Vaughan

and others, and Antoniades v. Villiers and another, [1988] 3 All England Reports 1058, as under :

"In two separate cases the question arose whether agreements to occupy flats created tenancies or licences.

In the first case, the appellant granted the right to occupy a furnished four bed-roomed flat to four individual flat-sharers under separate short-term agrements, termed 'licences', which were made at different times and on different terms but were normally for six months' duration. Each agreement provided for a different monthly rent and further provided that each occupant had the right to use [the flat] in common with others who have or may from time to time be granted the like right...but without the right to exclusive possession of any part of the...flat'. When an occupant left a new occupant was mutually agreed by the appellant and the remaining occupants. In 1985 the appellant served notices to quit on the four occupants. The occupants applied to a rent officer to have a fair rent registered for the flat on the basis that they were tenants of the flat but the appellant obtained a declaration that they were merely licensees and not tenants. Three of the occupants appealed to the Court of Appeal, which allowed their appeal. The appellant appealed to the House of Lords.

In the second case, the respondent let a flat to the appellants, a young unmarried couple, under separate but identical agreements termed 'licences' which were executed contemporaneously and stipulated with reiterated emphasis that the appellants were not to have exclusive possession. In particular, by cl.16, the agreements stated that "The licensor shall be entitled at any time to use the rooms together with the licensee and permit other persons to use all of the rooms together with the licensee' and further stated that the real intention of the parties in all the circumstances was to create a licence which did not come under the Rent Acts. The rental payable was L 87 per month by each occupant and the agreements were determinable by one month's notice by either party. The respondent never attempted to use any of the rooms or authorised

any other persons to use the rooms. In July 1986 the respondent gave the appellants notice to quit and applied to the court for an order for possession, but his claim was dismissed on the ground that the appellants were tenants who were entitled to the protection of the Rent Acts. The respondent appealed to the Court of Appeal, which allowed his appeal. The appellants appealed to the House of Lords.

Held__(1) In the first appeal, the agreements entered into by the appellant with the four occupants whereby each occupant had exclusive possession of one bedroom and shared the remainder of the accommodation did not have the effect of creating a collective joint tenancy amount the occupants of the flat for the time being by virtue of their having between them exclusive possession of the flat, since the agreements were independent of one another, commenced on different dates, covered different periods and provided for different payments for that occupation. Accordingly, the agreements constituted licences and the appeal would be allowed (see p.1060 j, p 1061 c.p 1064 h j,p p 1066 c d, p 1070 d to g, p 1074 f to j and p 1076 g to j, post); Street v. Mountford [1985] 2 All ER 289 distinguished.

(2) In the second appeal, the agreements were interdependent on one another and were therefore to be read together as constituting one single transaction. Since it was the intention of the two appellants to occupy the flat as man and wife and since that intention was known to the respondent, the true nature of the arrangement was to create a joint tenancy and the purported retention by the respondent of the right to share the occupation of the small flat with the appellants or to introduce an indefinite number of third parties to do so was clearly a pretence to deprive them of the protection of the Rent Acts. It followed that the agreements created a joint tenancy and not a licence, and the appeal would therefore be allowed."

Mr. Mishra has further relied on the decision of Kerala High Court in the case of M/s. Peramanand Gulabchand and Co. v. Mooligi Visanji - AIR 1990 Kerala 190, wherein it is held that "agreement entered between the plaintiff and defendant represents a lease transaction and the

defendant is a tenant of the plaint schedule premises and as such the suit for eviction filed without terminating the tenancy in accordance with law is not maintainable in law and has only to be dismissed."

8. Mr. Mishra has also relied on the decision of this Court in the case of Virji Lavji Makwana v. Partners of business running in the name of Rainbow Screen Shades and others - AIR 1979 Gujarat 178, wherein after considering the relevant facts and circumstances of the case, the Court has come to the conclusion that there is no escape from the conclusion that the real nature of the transaction is that of lease and not of licence and that the plaintiff has resorted to a device to eschew the Rent Act. It is further held that it is the real nature of the transaction which matters and it is a substance which is to be taken into account after removing the vacuum.

9. Lastly, Mr. Mishra has relied on the latest judgment of the Bombay High Court in the case of Ramesh Dwarkadas Mehra v. Indravati Dwarkadas Mehra - AIR 2001 Bombay 470, wherein it is held that "A suit by a licensor against a gratuitous licensee is not tenable before the Presidency Small Causes Court under S. 41 and such a suit should be filed before the Civil Court - the City Civil Court or the High Court depending on the valuation." It was further held that "The suit could not be filed on the basis of a tenancy, if the licence was gratuitous. Thus, the factual situation which was in the contemplation of the Legislature when bringing forward the amendment of S. 41 by Act XXI of 1975, did not include a gratuitous licensee. Thus, the amendment to S. 41, despite its somewhat wide language, was not intended to apply to gratuitous licensee."

10. On the basis of the aforesaid judgments, Mr. Mishra has strongly submitted that the order passed by the ld. Judge, Small Causes Court, requires to be reversed and the petitioners should not be deprived of the possession of their respective premises. On the other hand, Mr. Dhiraj M. Patel, ld. advocate appearing for the respondent has supported the order passed by the learned Judge of the Small Causes Court and has submitted that no jurisdictional error is committed by the ld. Judge while passing the said order and looking to the limited scope of revisional jurisdiction under Section 115 of the Civil Procedure Code, this Court should not interfere in the order passed by the learned Judge.

11. I have heard the ld. advocates appearing for the

respective parties and I have also gone through the order passed by the learned Judge. The authorities cited by the ld. advocate, Mr. Mishra appearing for the petitioners are also carefully considered by me. As far as the facts of the present case are concerned, it is an admitted position that the petitioners were the labourers doing labour work with the respondent firm. They were provided accommodation during the tenure of their service with the respondent firm. It is also an admitted position that a leave and licence agreement was executed between the petitioners and the respondent firm and it contained Clause No.6 under which the petitioners were supposed to vacate the premises when their services came to an end either by termination or by retirement or by resignation. There is no dispute about the fact that the business of the respondent came to an end and there was complete lock out of the business premises. The service contracts of the petitioners with the respondent-firm have virtually come to an end and leave and licence agreement was also terminated by issuance of the notice dated 9.4.1997. It is nobody's case that the petitioners were the gratuitous licensees. It is on these facts the decision given by the learned Judge, Small Causes Court is required to be decided and authorities cited by the ld. advocate appearing for the petitioners are to be applied. If we look at the very first decision, namely, Street v. Mountford, it is specifically mentioned in the bracketted portion that 'where from the outset there was no intention to create legal relations or where the possession was granted pursuant to a contract of employment is the special circumstance which negative the presumption of a tenancy and hence the ratio of the said decision is not applicable to the facts of the present case. Even in the 2nd decision, there are two appeals and two separate findings were given by the House of Lords after considering the facts and circumstances of the respective appeals. As far as the Kerala decision is concerned, the issue before the Court was with regard to the construction of an agreement between the parties and in that context the Court has quoted a passage from the decision of the Hon'ble Supreme Court in the case of Mrs. M.N. Clubwala and another v. Fida Hussain Saheb and others - AIR 1965 SC 610, wherein it is held "Whether an agreement creates between the parties the relationship of landlord and tenant or merely that of licensor and licensee the decisive consideration is the intention of the parties. This intention has to be ascertained on a consideration of all the relevant provisions in the agreement." In the present case, the learned Judge,Small Causes Court has considered the agreement in question and after considering the same he has come to the conclusion

that there was leave and licence agreement and there is no relationship of a landlord and tenant between the present respondent and the petitioners. As far as the Bombay Judgment is concerned, it is a specific case of a gratuitous licensee and in this context, the Court has come to the conclusion that a suit by a licensor against a gratuitous licensee is not tenable before the Presidency, Small Causes Court, under Section 41 of the Presidency Small Causes Court Act, 1882 and such a suit should be filed before the Civil Court - the City Civil Court or the High Court depending on the valuation. Here, in the present case, there is no question of a gratuitous licensee as the petitioners were the labourers doing labour work with the respondent firm and in view of their services rendered to the respondent firm, the accommodation was provided by the respondent firm. It was a material consideration and by no stretch of imagination it can be assumed that they were the gratuitous licensees. Hence the said decision does not advance the case of the petitioners any further.

12. Though the question of limitation was raised before the Small Causes Court, the same was not seriously argued and even otherwise the agreement in question was terminated on 9.4.1997 and the petition were filed on 19.7.1997. The petitions were, therefore, filed within the period of limitation. As far as the decision of the Small Causes Court on merits is concerned, the Court has decided the issue raised before it after considering the relevant facts and circumstances of the case and also after considering the statutory provisions and the authorities relied upon by the respective parties and after applying ratio thereof to the facts of the case, and hence I do not find any jurisdictional error. Hence, all these Civil Revision Applications are rejected. Notice is discharged with no order as to costs.

rmr. [K.A. Puj, J.]